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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HWANG, VICTOR KENNY

ART UNIT PAPER NUMBER

3764

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/877,577	Applicant(s) LOVISON, DOUGLAS I.	
	Examiner Victor K. Hwang	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed June 11, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

in the Amendments to the Specification, paragraph numbers 3 and 5; and

in the Amendments to the Claims, claims 8-17.

In the Amendments to the Specification (paragraphs 3 and 5) and in the Amendment to the Claims (claims 14-17), recitation was added that the bow may be as small as 30 degrees and may be any angle in the range between approximately 30 degrees and approximately 45 degrees. Applicant argues that an application may be amended so as to add statements not originally contained in it to conform to originally filed drawings to support the added recitation of the 30 degree value. This argument is unpersuasive because there is no requirement that the drawings are to scale and to rely on the informal drawings as originally filed for a particular dimensional value cannot be supported. In the first Office action, mailed September 29, 2003, the Examiner estimated that the angle between the grips 31a and 31b was approximately 110 degrees (see paragraph numbered 3). This would indicate that the angles A and A' are estimated to be approximately 35 degrees. The original specification does not provide support that the angle of the bow may be within a range or that it have a lower limit of 30 degrees. Presumably, claim 17 should depend from claim 16.

In the Amendments to the Claims, recitation was added to the method of claim 8 indicating that the crossbar is formed with a bow at the center and that it is bent at an approximately 45 degree angle and similarly, in claim 16, the crossbar is formed with a bow at the center bent at an angle in the range from 30 degrees to 45 degrees. Each of claim 8 and claim 16 recite “providing at least one hand grip” that implies that the method can be performed with more than one hand grip. As defined in the specification, a hand grip comprises a first wheel and a second wheel that are interconnected by a crossbar which defines an axis (page 4, lines 21-24). There is no disclosure or suggestion that more than one hand grip having a crossbar formed with a bow at the center is used in performing the disclosed method of exercise.

In fact, there is no disclosure detailing any use of the alternate embodiment of the hand grip having a bent crossbar. Only the alternate embodiment of the apparatus is disclosed, not a method of using the alternate embodiment. If a user were to try to grasp more than one hand grip having a bent crossbar, it clearly would be very uncomfortable since the grips 31a and 31b are angled and off-center. It also would be uncomfortable and unstable to grasp the crossbar between the grips 31a and 31b.

Furthermore, the specification in combination with the drawings of Figs. 4A and 4B, as originally filed, supports only the method of exercise wherein the invention has a straight crossbar since a user will hold a handgrip in each hand and roll the hand grip back and forth on the surface (page 5, line 31 to page 6, line 1). Figs. 4A and 4B show each hand grasping a separate handgrip so that the handgrips can follow parallel paths (Fig. 4A) or diverging/converging paths (Fig. 4B). It would not be logical to grasp one of the grips 31a or 31b of the alternative embodiment.

Applicant is required to cancel the new matter in the reply to this Office Action.

Response to Arguments

2. Applicant's arguments, see pages 18-22 of the Reply, filed June 11, 2005, with respect to claims 1-3 and 5-13 rejected in view of the prior art to *Bold, Jr.* (US Pat. 4,900,017) have been fully considered and are persuasive. The rejections of claims 1-3 and 5-13 as being anticipated or obvious in view of *Bold, Jr.* has been withdrawn.

3. Applicant's arguments with respect to claims 1 and 4-7 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that *Brockett et al.* discloses a barbell, but does not teach or suggest that the barbell can be used for any purpose other than lifting weights against the force of gravity and that there is not indication of any intent to use the barbell as an exercise device interactive with a surface (first reason); that the barbell is viewed solely as a barbell by the patent's examiner (second reason); and there is no indication in *Brockett et al.* that the weight members of the barbell are intended to be interactive with a surface (fourth reason). A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to Applicant's argument that *Brockett et al.* teaches away from the shape of the crossbar of the hand grip claimed (third reason), it is noted that the features upon which applicant relies (i.e., the number of bends limited to three) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicant's argument that *Brockett et al.* does not indicate that the friction between the weights and the bar of the barbell should be less than the rolling friction of such weight members (fifth reason), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). *Schnell* provides the motivation to minimize the friction between the weights and the crossbar.

In response to Applicant's argument that the structure handle of *Schnell* is substantially different from the structure of the wheel mountings of the hand grip of the Application, again, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). *Schnell* is used in the obviousness rejection to provide motivation to provide the ends of the crossbar of *Brockett et al.* with bearing means to permit the weights to freely rotate relative to the crossbar. This feature is well known in the exercise art and provided for in numerous barbells and dumbbells. See *Bodybuilder's Discount Outlet 1995 catalog* and *Universal Physical Conditioning Catalog 1985*.

Applicant argues that there is no metal tube interposed between the wheel and the crossbar (first reason), the claim language recites that the wheels are mounted for rotation around the axis at the end of the crossbar. *Schnell* discloses this limitation and does not teach away from

the limitation claimed. *Schnell* is used in the obviousness rejection to teach the use of a bearing means (claim 7) and in so doing also satisfies the claim limitation that the axle friction is less than the rolling friction, since the weights are freely rotatable relative to the crossbar.

In response to Applicant's argument that *Schnell* does not teach or suggest that the disclosed handle may be combined with the barbell of *Brockett et al.*, the bearing means of *Schnell* are disclosed as an improvement to the normal bearing means placed over the ends of a barbell (col. 2, lines 1-4) so *Schnell* is in fact teaching that it is well known in the art to provide bearings sleeves over the ends of barbells. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the bearing sleeves of *Schnell* used on the ends of a barbell can be applied to the ends of the barbell disclosed by *Brockett et al.* There is no disclosure that the sleeves could not be applied to the barbell of *Brockett et al.* in view of the fact that the sleeves are for use with barbells. The bends in the barbell of *Brockett et al.* are irrelevant to the application of the sleeves of *Schnell* to a barbell.

In response to Applicant's argument that *Schnell* teaches a handle-type structure comprised of a metal tube and a pair of elastic bearings and that the weights are not mounted on the metal tube section or sleeves, it is believed that the translation of the priority document from the German language to English resulted in awkward language in the US patent. In the detailed Abstract of the priority document DE 3,108,830 A1, weight discs are removably mounted to the sleeves. This would be logical, since there would be no other convenient means for adjusting the weight of the barbell using conventional weight discs. *Schnell* does teach that the weight discs are mounted on the metal tube section.

In response to Applicant's arguments with regard to *Frasco et al.*, *Frasco et al.* was cited as a teaching that it is well known in the exercise art to provide weight discs with a protective coating. This is still true, but it is believed that *Anastasi* alone provides the necessary motivation to provide the weight discs of *Brockett et al.* with a neoprene coating, in that the coatings provide added comfort to a user handling the weight discs. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 8-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See the above objection to the Amendment filed June 11, 2005.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 5-7, 14 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over *Brockett et al.* (US Pat. D 287,526) in view of *Schnell* (US Pat. 4,455,020). *Brockett et al.* discloses an exercise device comprising a hand grip for performing an exercise routine, the device comprising a crossbar defining an axis, the crossbar having a first end and a second end, wherein the crossbar is formed with a bow at the center of the crossbar and wherein the bow is bent at an approximately 30 to 45 degree angle. Each end of the crossbar rotatably supports an apertured, circular weight disc selectively mounted by a quick connect/disconnect collar attached to each end of the crossbar. The weight discs have rounded rims. The weight discs and their central apertures are considered to read upon the recitations of a wheel and hub since the weight discs can function equivalent to a wheel if the device is rolled on the ground. The device is fully capable of being rolled on the ground, and in countless gyms, it is rolled on the ground so that weight discs function as wheels.

Brockett et al. does not disclose the axle friction between the wheel/disc and crossbar less than the rolling friction between the surface and the rim of the wheel/disc (claims 1 and 14); and the hand grip further comprises a bearing means attached between the hub of each wheel and the crossbar for reducing the axle friction force therebetween (claim 7). Note that the limitation of

rolling friction is unclear because it relies upon an indefinite surface. Presumably the surface is a substantially smooth and hard surface.

Schnell discloses a bearing means 29 secured to the ends of a crossbar 1 to permit the free rotation of a weight disc/wheel 5,6 relative to the crossbar. Rotation of the crossbar handle is important so that a proper grip can be attained without excessive strain on the wrists or the hands which might ensue if the free rotation was not permitted .

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the crossbar of *Brockett et al.* with the bearing means of *Schnell*, in order to permit the crossbar handle to rotate freely relative to the weight discs/wheels, in order to permit a user to attain a proper grip without excessive strain on the wrists or hands.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Brockett et al.* as modified by *Schnell* as applied to claim 1 above, and further in view of *Anastasi* (US Pat. 5,741,206). *Brockett et al.* as modified by *Schnell* discloses the invention as claimed except for each wheel made of neoprene material (claim 3). *Anastasi* discloses a weight disc comprising a neoprene coating for providing a comfortable grip. Soft coatings on weight discs are also known to provide a disc surface that does not damage a supporting floor when the weight disc contacts the floor, or reduces contact noise between weight discs or between weight discs and the floor.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the weight discs/wheels of *Brockett et al.* as modified by *Schnell* with the neoprene coating of *Anastasi*, in order to provide more comfortable contact with a user, prevent contact damage, or reduce contact noise.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hall (US Pat. 1,779,594) discloses a barbell exercise device comprising wheels 2 for rolling to barbell along a floor surface.

Schnell (DE 3,108,830 A1) is the priority document for *Schnell* (US Pat. 4,455,020) including a more detailed English abstract.

Bodybuilder's Discount Outlet (1995 summer catalog, pages 31-32) and *Universal* (Physical Conditioning Equipment 1985 catalog, pages 36-37) disclose barbells and dumbbells having outer sleeves rotatable with respect to the bar so that the weight discs are rotatable relative to the bars.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

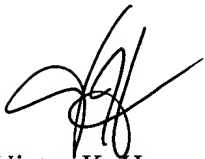
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang
August 30, 2005

JEROME W. DONNELLY
PRIMARY EXAMINER

